MINUTES OF MEETING OF
HEALTH STRATEGIES COUNCIL
Department of Community Health, Division of Health Planning
2 Peachtree Street, DHR Board Room, Atlanta, Georgia
Friday, August 19, 2005
■
11:00 am – 1:00 pm
Daniel W. Rahn, M.D., Chair, Presiding

MEMBERS PRESENT
William G. "Buck" Baker Jr., M.D
Harve R. Bauguess
Edward J. Bonn, CHE
Elizabeth Brock
Tary Brown
W. Clay Campbell
Nelson B. Conger, DMD
Charlene M. Hanson, Ed.D.,FNP
Julia L. Mikell, MD
James G. Peak
Toby D. Sidman (via conference call)
Oscar S. Spivey, MD
Tracy M. Strickland
Katherine L. Wetherbee, RN
David M. Williams, MD

MEMBERS ABSENT
Honorable Glenda M. Battle, RN, BSN
Katie B. Foster
Reverend Ike E. Mack
Felix Maher, DMD
Raymer Martin Sale, Jr.
Catherine Slade
Kurt M. Stuenkel, FACHE

GUESTS PRESENT
Jeff Baxter, Nelson Mullins
Charlotte W. Bedell, Tift County Commissioner
Ben Bedell
Taffey Bisbee
Christi Carmichael, Emory
Webb Cochran, Tenet
Bryan Fiveash, GOS
Lori Jenkins, Phoebe Putney Memorial Hospital
Bill Lewis, Lewis Consulting
Brian Looby, Medical Association of Georgia
Courtney Merritt, Georgia Dental Association
Victor Moldovan, Phears & Moldovan
Erin Moriarity, Atlanta Business Chronicle
Robyn Moore, Parker Hudson Rainer & Dobbs
Marc Mullin, Gwinnett Health System
Kevin Rowley, St. Francis Hospital
Temple Sellers, Georgia Hospital Association
Helen Sloat, Nelson Mullins
Julie Windom, Georgia Alliance of Community Hospitals

STAFF PRESENT
Neal Childers, JD
Charemon Grant, JD
Richard Greene ,JD
Robert Rozier, JD
Geeta Singh
Rhathelia Stroud, JD
Stephanie Taylor, MPS

WELCOME AND CALL TO ORDER

Dr. Rahn welcomed Council members and guests and called the meeting to order at 11:05 am.

REVIEW AND APPROVAL OF MINUTES OF FEBRUARY 28TH & MAY 20TH MEETINGS

Dr. Rahn called for a motion to accept the minutes of:

- February 28, 2005-Special Called Meeting of the Council. A motion to accept the minutes was made by Ed Bonn, seconded by Dr. Baker. The minutes were unanimously approved by the Council.
- May 20, 2005 Council meeting. Dr. Baker noted that page 5; third line; first bullet should be revised to read: *2003* Draft Proposed Rules, Ambulatory Surgical Services. Following this correction, a motion to accept the minutes was made by Elizabeth Brock, seconded by Dr. Spivey. The minutes were unanimously approved by the Council.

PRESENTATION OF RESOLUTION & PLAQUE TO HONOR THE MEMORY OF DAVID M. BEDELL, DVM

Dr. Rahn welcomed the family of the late David M. Bedell, namely Charlotte Bedell, widow and & Tift County Commissioner and Ben Bedell, son. He presented a plaque and a Resolution to Dr. Bedell's family and recognized his work and advocacy on the Council on behalf of Georgia's senior and rural citizens.

CHAIRMAN'S REPORT

Dr. Rahn provided several updates including the following:

New Facility

Dr. Rahn indicated that the Medical College of Georgia/School of Dentistry has a new facility planned. This initiative was recently approved by the Board of Regents. He said that the current facility, which was constructed in 1970, has not been updated for almost 36 years. He recognized this accomplishment as a major initiative in support of dental education in the state and said that this project has received support from the Georgia Dental Association. He further recognized the challenge of having to secure additional matching funds to advance this project. Dr. Rahn recognized Dean Drisko for her leadership in making the presentation to the Board of Regents.

Healthcare Workforce

Dr. Rahn reported that interest in the health professions continues to remain high and admissions to the programs at the Medical College of Georgia (MCG) are very competitive. He stated that MCG has the largest class in history among all five schools in the University System. He said that the University System plans to establish a task force to examine statewide healthcare workforce issues. He said that there needs to be an assessment as to whether the University System is adequately leveraging assets and is providing educational programs that will best meet the present and future healthcare needs of the state. Dr. Rahn said that this effort will be collaborative and will engage other state agencies, including the State Licensing Board, and will build on some of the previous work that had been done by the Division of Health Planning and the Healthcare Workforce Policy Advisory Committee. He said that he has been asked to chair the Healthcare Workforce Committee and noted that Valerie Hepburn, Georgia State University will provide staff support.

Medicaid Update

Dr. Rahn asked Mr. Childers to provide an update on the status of the Medicaid Managed Care Program.

Mr. Childers stated that the evaluation of the proposals to provide the state with managed care for low income Medicaid patients is ongoing. He said that proposals were received from ten managed care companies. Contracts were awarded in mid-July to three companies with various responsibilities among six designated regions of the state. One protest was received from a disappointed vendor, but the Department of Administrative Services determined that it was without merit and denied the protest. The awarded companies are now preparing to implement the first two regions (Atlanta and Central) by January 1st, 2006. He said that during the same time period, four proposals were received from companies interested in serving as enrollment brokers. He reported that a procurement had been done and the bid was awarded to Maximus.

Mr. Childers said the final step for the other populations that are not in a managed care program is to initiate a very good and well coordinated disease state management program. This program, which will be geared towards patients with serious and/or chronic conditions, will provide patients with mechanisms to better manage their healthcare services at lower costs. Mr. Childers said that two contracts have been awarded for this program. He explained that with this disease state management program, the state will be divided into North and South regions with one vendor in each region. The protest time is still in effect, so possible delays are not presently known. Mr. Childers said the managed care organizations are finalizing their networks and contracting with providers.

Dr. Rahn inquired about discrepancies with the award involving AmeriGroup and Peach State in the Southwest region. Mr. Childers explained that the DCH employees who perform the technical evaluations of the proposals are isolated from those reviewing the cost proposals. He said that when the Department of Administrative Services (DOAS) scored the cost proposal, there was a clerical error in transposing the scores. Once the error was discovered it was determined that it did change the outcome. The award for the southwest region of the state was changed from AmeriGroup to Peach State. Mr. Childers confirmed that AmeriGroup is informally contesting this decision.

Dr. Rahn asked about the issues of escalating Medicaid costs and difficulties with funding of the Medicaid program during this roll out period.

Mr. Childers said that DCH is phasing the rollout of the Medicaid Managed Care Program to lessen the risk of a bad outcome at the implementation phase. He said that the Department expects to realize some savings in two of the regions for half a year. The 2007 budget will rollout two more regions in July and the last two December 2006. He said that it is hoped that there will be enough savings toward the 2007 budget.

Dr. Rahn asked Mr.Childers for confirmation that the expected savings would be realized principally through more coordinated case management of chronic disease states and utilization. Mr. Childers agreed that these are the areas where savings are expected to be realized.

CON Commission

Dr. Rahn provided an update with regard to the work of the Commission on the Efficacy of the Certificate Need Program. He referenced a copy of the legislation in the packet (See Appendix A) and provided a summary of the Commission's membership noting that there are eleven members: 2 members appointed by the President of the Senate; 2 members by the Speaker of the House of Representatives; 4 members by the Governor, in addition to Commissioner Tim Burgess, Jeff Anderson, Chair, Board the Department of Community Health and himself.

Dr. Rahn reported that to date, the Commission has met twice and has decided to meet on a monthly basis. He described the Commission's work process noting that for the firsts six months the Commission would receive

input from various stakeholder groups. He said that these organizations would be asked to provide background material, answer questions from Commission members and provide recommendations on enhancements to the CON Program. He indicated that all meetings are open to the public.

Dr. Rahn said Georgia has a fairly extensive regulatory process in place and is among approximately 36 states that have a CON program. He said that there are a lot of interrelated issues, but the fundamental purpose of the Commission is to try to determine whether the current regulatory statute and administrative rules best meet the needs of the state with regard to balancing access to high quality healthcare services at the lowest possible cost for all Georgia citizens. He noted that the statute is written to allow the Commission to examine a range of issues.

Dr. Rahn explained that the scope and statutory authority of the Health Strategies is fairly broad. He said that over the years, the Council has examined existing Rules, sought input from the Department and have created technical advisory committee to advise on updating the Department's State Health Plans and Rules. He said that a change in the CON process could change the scope and focus of the Council considerably. Dr. Rahn indicated that the work of the Commission is expected to be concluded by July 2007.

Ms. Taylor mentioned that information pertaining to the Commission's work could be accessed from the Department's website including meeting dates, member information, meeting minutes, speaker presentations and other information.

UPDATE OF WORK OF INPATIENT PHYSICAL REHABILITATION SERVICES TECHNICAL ADVISORY COMMITTEE (TAC)

In the absence of Harve Bauguess, TAC Chair, Stephanie Taylor provided an update of the work of the Inpatient Physical Rehabilitation Services TAC noting that to date, the committee has held five meetings and the Department has presented several drafts of proposed Rules. She indicated there has been additional discussion and recommendations to include members who represent long term acute care hospitals and the TAC is awaiting guidance from the Council.

Dr. Rahn said that the Draft Proposed Rules for Inpatient Physical Rehabilitation Services will incorporate rules for Traumatic Brain Injury services. He said that the Council had recommended the formation of a TAC to create rules for long term acute care hospitals (LTACH) but the Inpatient Physical Rehabilitation Services TAC is willing to include LTACH within its scope of responsibility. Dr. Rahn indicated that he is in agreement to incorporate LTACH into the TAC's work to avoid the risk of having competing recommendations. Dr. Rahn noted that because of recent changes at the federal level impacting LTACHs, changes are needed to meet federal requirements. He noted that the State of Georgia has no rules that govern the development of LTACHs.

A motion to incorporate service-specific Rules for LTACHs as part of the Rules for Inpatient Physical Rehabilitation Services was made by Dr. Mikell, seconded by Charlene Hanson. The motion was unanimously approved by the Council. Dr. Rahn indicated that a report of the TAC's work and any recommendations would be presented at the November Council meeting.

DEPARTMENT AND DIVISION REPORTS

Atlantic CPORT Research Project

Dr. Rahn called on Richard Greene to provide an update of the Georgia Atlantic CPORT Research Project. Mr. Greene reported that 25 hospitals submitted a request to participate in the Georgia Atlantic CPORT Research

Project (See Appendix B). He said a selection advisory committee, consisting of well-known cardiologists practicing in Georgia, was formed to provide guidance to the Department and to review applications from hospitals seeking to participate in the research trial. He said that a decision regarding which hospitals would be able to participate is expected in mid -September and the Georgia Atlantic CPORT Research Trial would be launched in early January. Mr. Greene emphasized that individual training would be provided to each of the ten facilities selected to participate in the trial by CPORT personnel.

Dr. Rahn clarified that approval to participate in the Georgia-Atlantic CPORT Research Trial is limited to approved hospital participants and emphasized that participation is time-limited, based on research protocols. He said that no additional work is expected of the Health Strategies Council but regular progress reports would be provided. He said that participation by Georgia hospitals will contribute significantly to medical knowledge and will influence policy decisions in the future.

Indigent & Charity Care Ad Hoc Committee

Dr. Rahn called upon Stephanie Taylor to provide an update of the work of the Indigent & Charity Care Ad Hoc Committee. Ms. Taylor reported that the Indigent and Charity Care committee was established to provide guidance to the Department regarding definitions for charity care. She said that the committee's work had been put on hold, at the Commissioner's request, to explore issues surrounding disproportionate share hospital (DSH) funds. She said the committee received some correspondence from home health industry providers expressing concern about the Department's current rules that require the provision of 3% indigent and charity service so the Commissioner agreed that it would be prudent to address those issues, in the interim. She said the committee would be meeting following today's Council meeting and expects to present some proposed recommendations at the Council's November meeting.

Ambulatory Surgical Services Technical Advisory Committee

Dr. Rahn called on Robert Rozier to provide an update of the work of the Ambulatory Surgical Services Technical Advisory Committee (TAC). Robert Rozier said that the work of the Ambulatory Surgical Services Technical Advisory Committee (TAC) was put on hold pending guidance from the Office of Attorney General (OAG). He said that the Department has received recommendations from the OAG and he reviewed the recommendations. (See Appendix C)

Dr. Rahn indicated that the CON Commission has been asked to look at broad issues involving Certificate of Need. He stated that ambulatory surgical centers and freestanding diagnostic and/or therapeutic entities are key areas that would be examined by the CON Commission. He said that if the TAC proceeded with its work and made significant revisions to the current rules, it may have implications for the work of the Commission. He acknowledged his position as Chair of the CON Commission and recognized Commissioner Tim Burgess and DCH Board Chair, Jeff Anderson's participation on the Commission. He further mentioned that the Division of Health Planning provides staff support to the Commission.

Dr. Rahn inquired whether the TAC should be reconvened or whether they should wait until the Commission has made recommendations regarding ambulatory surgical services. He said that if the TAC is reconvened their work would be proceeding simultaneously with that of the Commission. He expressed concern about the operation of Health Strategies Council and proceeding with new rule development in the area of ambulatory surgical services during a time when the overall process is being reviewed by the CON Commission. Dr. Rahn restated that the main focus of the Council and the TAC is the health care needs of the citizens of the State of Georgia.

Council members inquired as to whether the Council could offer recommendations to the Department, based on input from the OAG.

Mr. Peak expressed strong support that the TAC should continue with its work, based on the input that was received from the OAG. He suggested that the TAC not rehash those areas where agreement has been reached but to concentrate on those outstanding issues that were addressed by the OAG.

Dr. Baker reported the TAC was prepared to present the draft Rules to the Council for approval. He said that at the November 2003 Council meeting the Department and other constituents identified several areas of concern. He said that presentation of the draft Rules was delayed in order to receive input from the OAG and not because there was difficulty in administering the current rules.

Council members asked about legal actions regarding ambulatory surgery services within the Department. Mr. Childers explained that there is a number of litigation regarding facilities that are exempt from CON regulation; none concerning ambulatory surgery centers that are regulated by CON.

Dr. Rahn clarified that the TAC addresses only the rule making process for ambulatory surgery centers that are required to apply for a CON and not the category of single-specialty ambulatory surgical centers that qualify for Letters of Non-reviewability.

Dr. Baker stated that he would defer to the Commission for guidance on whether the TAC should be reconvened to continue to address ambulatory surgical service issues or whether the Council should wait for recommendations from the Commission.

Dr. Mikell made a motion to place the work of the TAC on hold pending the outcome of the work of the CON Commission. This motion was seconded by Elizabeth Brock. 11 members voted in agreement of this motion; 3 members voted in opposition to this motion. 1 member abstained (Note: one member, Harve Bauguess, arrived subsequent to this motion). Dr. Rahn agreed to present this recommendation to the Commission and would report back to the Council at the November meeting.

Ms. Wetherbee stated that there has been considerable criticism of the make-up of the Department's TACs. She said that the Council should have a final vote on all TAC memberships. Ms. Wetherbee made a motion, seconded by Charlene Hanson, that the Council should closely examine the composition of each TAC to ensure objectivity. She said that final approval of membership should be provided by the Council.

Mr. Childers asserted that the Department's philosophy has been to create balanced membership on all TACs.

Some members questioned whether the proposed motion, if implemented, may create further administrative burden and slow down the health planning process.

Dr. Rahn amended Ms. Wetherbee's motion as follows: Department staff should make every effort to constitute TACs with individuals who do not have a conflict of interest, and Council members should be provided with an opportunity to review the proposed membership before it becomes official. He said that objection to TAC membership by Council member/s would be taken under advisement by the Department staff however final ruling would be made by the Council Chair. Ms. Wetherbee agreed to the amended motion. Charlene Hanson seconded the amended motion. 7 members voted in support of this motion; 6 members voted in opposition of this motion. (Note: One member, Edward Bonn, departed the meeting prior to this vote).

Proposed Interim Long Term Care Hospital & Radiosurgery Rules

LONG TERM ACUTE CARE HOSPITALS (See Appendix D)
Dr. Rahn asked Mr. Rozier to present the draft proposed rules for long term acute care hospitals (LTACH). Mr. Rozier said that the HSC approved the formation of a TAC to consider specific standards for long-term acute care hospitals. He stated that the proposed LTACH rule would clarify LTACH as a specific clinical health service with distinctive standards and one that requires submission of a CON application. He clarified that LTACHs are currently reviewed under the Department's General Considerations Administrative Rules. Mr. Rozier explained that since short stay general hospitals have an Average Length of Stay (ALOS) of less than thirty days and LTACH's have an ALOS of 25 days or greater, they could not be reviewed under the same CON rule.

Dr. Rahn confirmed the purpose of the proposed rule is to define for applicants that applications for LTACHs would be reviewed under General Considerations until the TAC provides service-specific rules. A motion to approve the Draft Proposed Rule was made by Jim Peak, seconded by Clay Campbell. The Council voted unanimously to approve the draft proposed interim rule and to forward it to the DCH Board for issuance for public comment.

STEREOTACTIC RADIOSURGICAL SERVICES RULES (See Appendix D)
Mr. Rozier indicated that this rule was developed because there have been many new devices that are being used since the original Radiation Therapy Rule was written. He explained the Rule's broad inclusions of linear accelerators, x-rays, and any other equipment that are used to destroy cancer cells. He explained that the Department has always applied the existing definition because the need methodology is focused on conventional radiation using linear accelerators. The new definition being proposed will include a new device called stereotactic radiosurgery. Mr. Rozier said the definition of this equipment was provided from the International Stereo-tactic Radiosurgery Association. He gave a brief summary of Stereotactic Radiosurgery and its purpose.

Mr. Rozier acknowledged that the Council has voted to form a TAC to discuss standards for these devices. He said this rule provides public information that this equipment would be reviewed under General Considerations since the Radiation Therapy rules do not necessarily apply until the TAC provides service-specific rules. He noted the stereotactic radiosurgery units are capable of doing 250 treatments a year; conventional linear accelerators are written in the rules with 6,000 optimal numbers of treatments/per year. Inclusion of the new device would affect the calculation of the need methodology, which is based on utilization of conventional Radiation Therapy.

Mr. Rozier made note that a purchase of a stereotactic radiosurgery unit would always exceed the CON equipment dollar threshold of $734,695. He said that more importantly, facilities are replacing linear accelerators with stereotactic radiosurgery units under the replacement provisions of the CON statute. He said that the Department's Health Planning Rules that were adopted earlier this year, state that the replacement equipment should provide the same or similar therapeutic or diagnostic service as the equipment being replaced. The Department does not agree that stereotactic radiosurgery units are the same type of equipment as linear accelerators. He said that since facilities do not have to receive permission to replace their equipment, entities would continue to replace linear accelerators with stereo-tactic radiosurgery units if the Department doesn't implement this rule. The proposed rule states that stereo-tactic radiosurgery is a distinct clinical health service and makes it clear that the Department would not recognized them as replacements to conventional units.

Mr. Rozier stated that following the approval of this draft proposed rule by the Council, this rule would be forwarded to the DCH Board for issuance for public comments. A motion to approve the draft proposed rule was

made by David Williams, seconded by Katherine Wetherbee. The Council unanimously approved the draft proposed rules.

Psychiatric & Substance Abuse Inpatient Services TAC

Dr. Rahn asked Ms. Taylor to provide an update of the work of the Psychiatric & Substance Abuse Inpatient Services TAC. Ms. Taylor stated that the Council voted to convene a TAC to examine the State Health Plan and Rules for Psychiatric & Substance Abuse Inpatient Services due to the age of these documents. She indicated that TAC members had been selected and said that Honorable Glenda Battle had agreed to chair this committee. Dr. Rahn asked Mrs. Taylor to email the proposed committee membership to Council members for consideration, in light of approval of a previous motion today.

CON UPDATE

Ms. Stroud indicated that there are 31 CON projects pending and approximately 4-6 Appeal projects that will be going through an administrative hearing within the next 1-2 months.

OTHER BUSINESS & ADJOURNMENT

The next meeting is scheduled for Friday, November 19th at 11:00 am. There being no further business, the meeting adjourned at 1:15 pm.

Minutes taken on behalf of the Chair by Brigitte Maddox and Stephanie Taylor.

Respectfully Submitted,

Daniel W. Rahn, MD
Chair

MINUTES OF MEETING OF
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APPENDIX A

House Bill 390

House Bill 390 (AS PASSED HOUSE AND SENATE)
By: Representatives Scott of the 153rd and Brown of the 69th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 6 of Title 31of the Official Code of Georgia Annotated, relating to state health planning and development, so as to create a State Commission on the Efficacy of the Certificate of Need Program; to provide for legislative intent; to provide for composition of the commission and the commission's powers and duties; to provide for compensation of the members of the commission; to provide for officers of the commission; to provide for a quorum for the transaction of business; to provide for a final report; to provide for related matters; to provide an effective date; to provide for automatic repeal on a certain date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.
Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to state health planning and development, is amended by adding a new Article 5 to read as follows:

∀ ARTICLE 5

31-6-90.
The General Assembly finds and declares that it is important to periodically assess various existing state programs to determine whether such programs continue to be viable and effective or whether they have become obsolete and have failed to or ceased to accomplish their original policy objectives. The General Assembly further finds that access to quality health care and the rising cost of such care are vitally important to the citizens of Georgia. Therefore, the General Assembly has determined that it is in the best interests of the state and its citizenry to undertake an evaluation of the certificate of need program.

31-6-91.
There is created a State Commission on the Efficacy of the Certificate of Need Program for the purpose of studying and collecting information and data relating to the effectiveness of the certificate of need program in Georgia. The commission shall be responsible for conducting a comprehensive review of the certificate of need program which shall include,

but not be limited to, the effectiveness of the program in accomplishing its original policy objectives, the costs associated with the program, and the impact on health care and costs of continuing or discontinuing the program. Further, the commission shall undertake to determine if changes to the program are needed in order to achieve its policy objectives. These changes include, but are not limited to, a determination as to whether services currently not subject to regulation should be regulated; whether services currently subject to regulation should no longer be regulated; and whether the current statutory appeals procedure properly balances the competing goals of good decision making and timeliness, as well as whether or not it is subject to abuse.

31-6-92.

(a) The State Commission on the Efficacy of the Certificate of Need Program shall be composed of 11 members. The Governor shall appoint four members. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint two members, as each deems advisable. The chairpersons of the Board of Community Health and the Health Strategies Council, and the Commissioner of the Department of Community Health shall be ex officio members of the commission.

(b) The Governor shall designate the chairperson of the Board of Community Health or the chairperson of the Health Strategies Council to serve as the chairperson of the commission. The commission may elect other officers as deemed necessary. The chairperson of the commission may designate and appoint committees from among the membership of the commission as well as appoint other persons to perform such functions as he or she may determine to be necessary as relevant to and consistent with this article. The chairperson shall only vote to break a tie.

31-6-93.

(a) The commission shall hold meetings at the call of the chairperson.

(b) A quorum for transacting business shall be a majority of the members of the commission.

(c) Any legislative members of the commission shall receive the allowances provided for in Code Section 28-1-8. Citizen members shall receive a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance authorized for state employees. Any members of the commission who are state officials, other than legislative members, and state employees shall receive no compensation for their services on the commission, but they shall be reimbursed for expenses incurred by them in the performance of their duties as members of the commission in the same manner as they are reimbursed for expenses in their capacities as state officials or employees. The funds necessary for the reimbursement of the expenses of state officials, other than legislative members, and state employees shall come from funds appropriated to or otherwise available to their respective departments. All other funds necessary to carry out the provisions of this article shall come from funds appropriated to the House of Representatives and the Senate.

31-6-94.

(a) The commission shall have the following duties:

(1) To study and evaluate the effectiveness and efficiency of Georgia's certificate of need program and any other program or matter related to the cost and quality of health care in Georgia, as determined by the commission;

(2) To undertake a comprehensive review of the certificate of need program which shall include, but not be limited to, the effectiveness of the program in accomplishing its original policy objectives, the costs associated with the program, the benefits of continuing or discontinuing the program, the financial impact of continuing or discontinuing the program, and the impact on the quality, availability, and cost of health care if the program is continued or discontinued;

(3) To evaluate and consider the experiences and results in other states which utilize and which have abolished certificate of need programs;

(4) To identify findings and conclusions, including but not limited to recommendations as to whether the certificate of need program should be continued, discontinued, or modified;

(5) To evaluate the impact of continuing or discontinuing the certificate of need on providing patient care in trauma care hospitals, critical access hospitals, and public hospitals;

(6) To evaluate the impact of continuing or discontinuing the certificate of need program on providing service to Medicaid and indigent patients; and

(7) To make recommendations for proposed legislation.

(b) The commission shall have the following powers:

(1) To evaluate the certificate of need program in Georgia and any other program or matter relative to the cost and quality of health care in Georgia;

(2) To conduct a state-wide audit of the certificate of need program in Georgia;

(3) To request and receive data from and review the records of appropriate agencies and health care facilities to the greatest extent allowed by state and federal law;

(4) To accept public or private grants, devises, and bequests;

(5) To enter into all contracts or agreements necessary or incidental to the performance of its duties; and

(6) To conduct studies, collect data, or take any other action the commission deems necessary to fulfill its responsibilities.

(c) The commission shall be authorized to retain the services of auditors, attorneys, financial consultants, health care experts, economists, and other individuals or firms as determined appropriate by the commission.

(d) Staff support for the commission shall be provided by the Department of Community Health. The Department of Community Health may use any funds specifically appropriated to the department to support the work of the commission for such purpose.

(e) The commission shall issue a final report which shall include proposed legislation, if any, to the Governor and the General Assembly on or before June 30, 2007.

31-6-95.

The commission shall stand abolished and this article shall be repealed on June 30, 2007.∀

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.

STATE COMMISSION ON THE EFFICACY OF THE CERTIFICATE OF NEED PROGRAM

Membership List

DANIEL W. RAHN, MD, CHAIR
President, Medical College of Georgia

JEFF ANDERSON
Chair
Board of Community Health

DON BALFOUR
Chair
Senate Rules Committee

TIM BURGESS
Commissioner
Department of Community Health

MELVIN DEESE, MD
Orthopedic Surgeon
Summit Sports Medicine

DONNA JOHNSON, ESQ.
President
Donna L. Johnson, P.C.

ROBERT LIPSON, MD
President & Chief Executive Officer
WellStar Health Systems, Inc.

DAN MADDOCK
President
Taylor Regional Hospital &
Healthcare Group

RONNIE ROLLINS
President & Chief Executive Officer
Community Health Systems

JOSEPH R. ROSS, ESQ.
Senior V.P.& General Counsel
Memorial Health

REPRESENTATIVE AUSTIN SCOTT
Chair
Government Affairs Committee

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APPENDIX B

List of Hospitals that Submitted a Request to Participate in the Georgia-Atlantic CPORT Research Trial

GEORGIA DEPARTMENT OF
COMMUNITY HEALTH

Tim Burgess, Commissioner

Sonny Perdue, Governor

2 Peachtree Street, NW
Atlanta, GA 30303-3159
www.communityhealth.state.ga.us

July 1, 2005

Below is a list of the (25) facilities that submitted a Request to Participate in the Georgia/Atlantic C-PORT Trial as authorized by Rule 111-2-2-.21.

1. John D. Archbold Hospital, Inc.
2. Cartersville Medical Center
3. Cobb Hospital, Inc. dba WellStar Cobb Hospital
4. Dekalb Medical Center
5. Doctors Hospital – Augusta
6. Emory Eastside Medical Center
7. Fairview Park Hospital
8. Floyd Medical Center, Inc.
9. Gwinnett Medical Center
10. Hamilton Medical Center, Inc.
11. Henry Medical Center, Inc.
12. Meadows Regional Medical Center
13. Newnan Hospital
14. North Fulton Regional Hospital
15. Northside Hospital
16. Rockdale Medical Center
17. Satilla Health Services, Inc. dba Satilla Regional Medical Center
18. Southeast Georgia Health System
19. Southern Regional Medical Center
20. Spalding Regional Medical Center
21. St. Mary's Healthcare System
22. Tanner Medical Center, Inc.
23. The Medical Center, Inc.
24. Tift Regional Medical Center
25. West Georgia Health System, Inc.

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APPENDIX C

Summary of Law Department's Review of the Proposed Revisions to the Draft Ambulatory Surgery Services Rules

Summary of Law Department Review
Of
TAC-Proposed Revisions to Ambulatory Surgery Services Rule

As you are aware, the Department asked the Department of Law to review the TAC-proposed revisions to the ambulatory surgery services regulation. Staff at the Department of Law carefully reviewed the proposed revisions and provided feedback to the Department. The Department has summarized the Law Department's findings below.

1. **Exclusion of freestanding facilities remote from hospital campuses but owned by a hospital or billed under a hospital's provider number is in contravention of the CON Statute**

   The CON Statute precludes defining the term, "part of a hospital," to include freestanding facilities integrated with and billed under a hospital's provider number if such facilities are not on a hospital's campus. The CON statute, at OCGA § 31-6-2(1), defines an "ambulatory surgical service" as a facility, which is not part of a hospital. The phrase, "not part of a hospital" refers to geographic location, and not just to ownership. Comparatively, other provisions within the statute use terms such as "owned by," "operated by," and "utilized by" certain entities or individuals. *C.f.* OCGA § 31-6-2(14) (G) (iii) (exempting from CON review ASCs that are "owned, operated and utilized by private physicians.") Furthermore, the statute clearly maintains that Certificates of Need are location specific and places particular emphasis on location throughout.

   Action Needed: Freestanding facilities which are not located on a hospital's campus must be reviewed in the same manner as all other freestanding facilities. As the proposed revision provides to the contrary, it must be revised.

2. **Distinct criteria for replacement facilities is authorized as long as such distinctions have a rational basis**

   As long as a rational basis for distinguishing criteria for replacement and new facilities is identified, replacement facilities may be reviewed under separate and distinct review criteria. Since the revisions were proposed, the Department has developed and promulgated several generally applicable rules regarding replacement facilities.

   Action Needed: The component plan should be revised to identify a rational basis for distinct review criteria for replacement facilities. In addition, the proposed revisions must be revised to comport with the Department's current regulations regarding replacement facilities.

3. **Inclusion of rooms where surgical treatment is performed solely without anesthesia, with a level of anesthesia less than regional, or in an environment that does not meet the standards for operating rooms established by the Department of Human Resources is not authorized by Statute**

The CON statute, at OCGA § 31-6-2(1), defines an "ambulatory surgical service" as a facility, which provides surgical treatment performed under general or regional anesthesia in an operating room environment. The proposed revision's definition of operating room may include rooms in which surgical treatment is performed without anesthesia or under minor or local anesthetics, such as endoscopies.

Action Needed: The proposed revision must be revised to exclude rooms that are used solely for surgical procedures not requiring anesthesia or requiring anesthesia at a level below regional. If a room will be licensed by DHR as an operating room it should be counted in the inventory of operating rooms, if it will not be so licensed, it cannot be counted in the inventory.

4. **The term "expansion" needs clarification to define the exact instances in which an application would be reviewed under the ASC rules and the general considerations as opposed to solely the general considerations**

The proposed revision states that a project would be reviewed under the ASC rule only when operating rooms are added and the cost exceeds the threshold. The revision does not clarify what would occur when operating rooms are added below the threshold or what would happen when the threshold is exceeded but no operating rooms are added. It is currently the practice of the Department to apply the ASC-specific rules whenever ORs are added regardless of cost.

Action Needed: The proposed revision should be modified to clarify when an ASC expansion project would be reviewed under the ASC rule and when it would be reviewed solely under the general considerations.

5. **Exhaustive lists of surgical specialties must provide rational bases for excluding non-included specialties or, in the alternative, a non-exhaustive listing should be employed along with regulatory criteria for determining a single specialty**

The CON statute does not specifically define "single specialty." Therefore, it is within the Department's authority to define this term (except for the inclusion of general surgery). The proposed revision employs an exhaustive listing of specialties which qualify as a single specialty. When certain items are excluded from an exhaustive list, administrative law requires that a reasonable basis for distinction be articulated.

Action Needed: The component plan must document a reasonable basis for the exclusion of specialties from an exhaustive list, or in the alternative, a non-exhaustive list should be employed. If a non-exhaustive list is employed, then the rule should specify objective criteria by which the Department can judge the eligibility of a specialty not specifically listed, e.g. by reference to a medical certification board.

MINUTES OF MEETING OF
HEALTH STRATEGIES COUNCIL
Department of Community Health, Division of Health Planning
2 Peachtree Street, DHR Board Room, Atlanta, Georgia
Friday, August 19, 2005

APPENDIX D

Draft Proposed Health Planning Rules

DRAFT PROPOSED HEALTH PLANNING RULES

Summary

The two following rules are being proposed to ensure that all entities affected by certificate of need rules are aware that the establishment or expansion of a long term care hospital or the establishment or expansion of stereotactic radiosurgical services require certificate of need review and approval. The Health Strategies Council has previously adopted resolutions indicating that these two services are new institutional health services for which service specific rules should be created under the advisement of Technical Advisory Committees. During the Technical Advisory Committee process, this proposed rule will govern the review of these two new institutional health services.

SYNOPSIS

Rule 111-2-2-.36

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

The purpose of this proposed new regulation is to ensure that all entities affected by Certificate of Need laws and regulations are aware that the establishment or expansion of a long term care hospital requires prior Certificate of Need review and approval as a new institutional health service. Applications for this new institutional health service will be reviewed under the general considerations contained within the CON statute until such time as a Technical Advisory Committee has adopted further detailed standards under which such projects will be reviewed.

RULES
OF
GEORGIA DEPARTMENT OF COMMUNITY HEALTH

CHAPTER 111-2
HEALTH PLANNING

SUB-CHAPTER 111-2-2
Certificate of Need

111-2-2-.36 Specific Review Considerations for Long Term Care Hospitals.

(1) Applicability. A certificate of need will be required prior to the establishment of any new long term care hospital; the expansion of any existing long term care hospital; or the consolidation of long term care hospitals. Any such establishment, expansion, or consolidation shall be reviewed solely under the general considerations of 111-2-2-.09.

(2) Definitions.

(a) "Consolidation" means the merger of two or more existing long term care hospitals into a single facility without exceeding the combined bed capacity of the existing hospitals;

(b) "Expansion" means the addition of beds, regardless of cost, or the expenditure of funds in excess of the current capital expenditure threshold;

(c) "Long term care hospital" means a freestanding hospital or a hospital located within a general acute care hospital, which, in the case of an existing facility, has an average length of stay of greater than 25 days and is certified by the Center for Medicare and Medicaid Services ("CMS") as a long term care hospital, or, which, in the case of an applicant proposing to establish a long term care hospital, proposes to have an average length of stay of greater than 25 days and proposes to be certified by CMS as a long term care hospital.

AUTHORITY: O.C.G.A. §§ 31-5A *et seq.* and 31-6 *et seq.*

SYNOPSIS

Rule 111-2-2-.43

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

The purpose of this proposed new regulation is to ensure that all entities affected by Certificate of Need laws and regulations are aware that the establishment or expansion of stereotactic radiosurgical services requires prior Certificate of Need review and approval as a new institutional health service. Applications for this new institutional health service will be reviewed under the general considerations contained within the CON statute until such time as a Technical Advisory Committee has adopted further detailed standards under which such projects will be reviewed.

RULES
OF
GEORGIA DEPARTMENT OF COMMUNITY HEALTH

CHAPTER 111-2
HEALTH PLANNING

SUB-CHAPTER 111-2-2
Certificate of Need

111-2-2-.43 Specific Review Considerations for Stereotactic Radiosurgical Services

(1) Applicability. A certificate of need will be required for the establishment of any new or expanded stereotactic radiosurgical service. Any such establishment or expansion shall be reviewed solely under the general considerations of 111-2-2-.09.

(2) Definitions.

(a) "Expansion" means the addition of units of stereotactic radiosurgical services equipment, regardless of cost, or the expenditure of funds in excess of the current capital expenditure threshold in association with stereotactic radiosurgical services;

(b) "Stereotactic Radiosurgical Services" means the provision of therapeutic services as a primary treatment or as a boost or adjunct to other treatments through the precise delivery of high dose radiation in a single session or in fractionated sessions of no more than five per course of treatment. Such treatment involves the use of highly focused radiation beams delivered to a specific area of the brain or body to treat abnormalities, tumors, or other functional disorders. Additionally, this treatment typically employs three-dimensional computer-aided planning and a high degree of immobilization of the head or body. There are three basic forms of stereotactic radiosurgery represented by three different technological instruments. Each instrument operates differently and has a different source of radiation. The three are: Particle beam (proton), Cobalt 60 based (photon), and Linear accelerator based. At the time of the adoption of these Rules, the brand names of stereotactic radiosurgical equipment include Gamma Knife®, a photon based unit, and the following linear accelerator based units: X-Knife®, SynergyS®, Trilogy®, Novalis®, and CyberKnife®.

AUTHORITY: O.C.G.A. §§ 31-5A *et seq.* and 31-6 *et seq.*